

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 573

Case No. 87-18M/86-1C

May 23, 1988

(Boston Properties Square 35 and Square 24 - PUD's)

Pursuant to notice, the District of Columbia Zoning Commission held public hearings on September 10, 1987, and February 1, 1988 to consider the application of Boston Properties for consolidated review and approval of a Planned Unit Development (PUD), pursuant to Chapter 24 of the Zoning Regulations of the District of Columbia, DCMR Title 11, Zoning. The public hearings were conducted in accordance with provisions of Chapter 6 of the Rules of Practice and Procedure before the Zoning Commission. The record in this case incorporates the records in Z.C. Case No. 87-18C and 86-1C.

FINDINGS OF FACT

1. By Z.C. Order No. 512, dated December 8, 1986, in Z.C. Case No. 86-1C the Zoning Commission approved a mixed use PUD for Lot 802 in Square 35.
2. Application 86-1C, which was filed on February 6, 1986, had requested consolidated review and approval of a PUD and related change of zoning for lot 802 in Square 35 from R-5-B to CR.
3. Z.C. Order No. 512 approved a 6 story, mixed use residential and office building, containing 45,626 square feet of office space, up to 44 dwelling units, and underground parking for 99 cars. The building had a height of 65 feet, FAR of 4.05 (1.87 FAR for office use and 2.18 for residential use) and a lot occupancy of 74.98.
4. The modification that is being sought in this case, that is 87-18M/86-1C, requests that the approved 1.87 FAR of office use, pursuant to Z.C. Order No. 512, be converted to residential use. This, in effect, would yield an "all residential" building for lot 802 in Square 35, at 2301 N Street, N.W.
5. In March 1987, Boston Properties filed an application

to develop an 8-story commercial office building on lot 110 in Square 24 @ 25th and N Streets, N.W., with below-grade parking for 130 cars and an amenities package, including the establishment of a \$2.2 million fund for use by the People's Involvement Corporation (PIC) for the production of low and moderate income housing in other areas of the District of Columbia and a \$50,000 contribution to the D.C. Department of Recreation for improvements to Francis Recreation Center.

6. The CR District permits matter-of-right residential, commercial, and certain light industrial development to a maximum height of ninety-feet, a maximum FAR of 6.0 for residential and 3.0 for all other permitted uses, and a maximum lot occupancy of seventy-five (75) percent for residential uses. By covenant entered into August 27, 1984, the owner of lot 110 (then designated as Area B of lot 107, Square 24) transferred all but 223.4 square feet of the potential non-residential gross floor area of lot 110 to the adjacent site. This is essentially 0.0 in terms of FAR. Pursuant to 11 DCMR 2403.10, 1.0 non-residential FAR would be attainable pursuant to the development guidelines of the PUD process, as applicable to the CR District.
7. On September 10, 1987, the Zoning Commission held a public hearing on the application. The applicant and its witnesses testified that the Square 24 site is well-suited to offices, but not to residential development because of market conditions, site configuration and location. The applicant also described the search for potential sites for the development of housing under the linkage program and described the selected sites.
8. The Office of Planning, by memorandum dated August 27, 1987, recommended approval of the March 1987 application.
9. Advisory Neighborhood Commission (ANC) 2A, by letter dated September 3, 1987, opposed the application. ANC 2A believes that the proposal disregards the Comprehensive Plan designation of the area for mixed use, does not comply with the goals of the draft Ward 2 Plan, includes a housing proposal that does not qualify as linkage, ignores an earlier agreement to construct housing on the Square 24 Site, will exacerbate traffic congestion and does not enhance the neighborhood or provide amenities superior to those which could be achieved under matter-of-right development. ANC 2A further believes that the Square 24 Site is an attractive site for residential development.

10. The Square 24 Site is between Georgetown to the west and the Central Employment Area to the east.
11. At the end of Boston Properties' presentation of its case, the Commission indicated that, to fulfill the goals of the CR Zone, housing should be produced on or near the site and the Commission requested that Boston Properties rethink its housing linkage proposal. The Commission also expressed concern about the height and FAR of the proposed building. A motion to deny the application was made and seconded. Before the Commission voted on the motion to deny the application, counsel for Boston Properties requested an opportunity to submit a revised proposal that would address the concerns which the Commission had expressed. After restudying various development options, Boston Properties concluded that residential or mixed-use development of the site remained infeasible, but developed an alternative development proposal.
12. On February 1, 1988, the Zoning Commission held a public hearing on the revised application. Mr. Robert E. Burke, the applicant's representative, testified that the revised proposal involves the co-development of a commercial office building on the Square 24 Site and a residential apartment building on the Square 35 Site. Applicant contends that this proposal fulfills the mixed-use goals of the CR Zone, maximizes the number of housing units produced, and provides significant amenities in the West End.
13. Mr. Richard Giegengack, of Skidmore, Owings & Merrill, recognized by the Commission as an expert in architecture and urban design, described the office building. The building would be the fifth element of the six-phase U.S. News & World Report complex.
14. The co-development proposal provides two alternatives for the development of the Square 24 Site. Both alternatives involve reducing the height and FAR of the building from the original proposal. Alternative A is a 7-story office building containing 128,362 gross square feet and underground parking for 130 cars. The height of the building has been reduced to 79 feet and the FAR to 5.23. Alternative B is a 6-story office building containing 109,522 gross square feet and a minimum of 113 underground parking spaces. The height has been reduced to 75 feet and the FAR to 4.46.
15. Mr. Giegengack testified that the seven-story alternative is the preferred architectural massing and urban design solution, because it provides a more gradual transition between the adjacent eight and six-story office buildings and a stronger mass at the corner of N and 25th Streets.

16. The revised plan for the development of the Square 35 Site was described by Mr. Alan Lockman, recognized by the Commission as an expert in architecture and urban design. It provides for a 7-story apartment building with a minimum of 101 dwelling units and 103 underground parking spaces. The all-residential building has a height of 65 feet, FAR of 4.26 and a lot occupancy of 71.4 percent.
17. The co-development proposal includes the amenities package described below. In addition, if the seven-story alternative is approved for the office building, the amenities will also include a cash contribution of \$300,000 to the People's Involvement Corporation for the development of low-and-moderate-income housing in the District of Columbia. The amenities package includes:
 - a. The extension of 24th Street along its present center line, terminating in a cul-de-sac at the edge of the park with entrances to the school and the residential apartment building on the Square 35 Site (valued at approximately \$77,000);
 - b. Additional pathways and lighting, extensive grading and landscaping to the area within Rock Creek Park that is currently used as a gravel parking lot, construction of other improvements within the park and perpetual maintenance of a portion of the park (valued at approximately \$141,000);
 - c. Resurfacing the two easternmost existing tennis courts, repaving the existing basketball court and installing new backboards (valued at approximately \$15,000);
 - d. Repaving the badly deteriorated Francis Junior High School parking lots and regrading and landscaping the area west of the school (valued at approximately \$64,000);
 - e. An initial financial grant of \$10,000 and additional annual grant of \$5,000 - \$10,000 to the D.C. Board of Education for educational programs or physical improvements at Francis Junior High School (valued at approximately \$60,000);
 - f. Lease payments to the D.C. Board of Education for the use of its property for the 24th Street extension (valued at approximately \$50,000);
 - g. Replacement of existing cherry trees that will be affected by construction activities with new trees of the same caliper, to be located in the triangular parcel of land east of 23rd Street

behind the existing residential buildings and, subject to National Park Service approval, in Rock Creek Park (valued at approximately \$10,000);

- h. Streetscape improvements along N, 22nd and 23rd Streets, including new sidewalks, installation of an additional decorative light pole, repair of existing block paving and construction of architectural elements (valued at approximately \$35,000);
 - i. Participation in a rideshare program;
 - j. Participation in the District's First Source Employment Program;
 - k. MBOC commitments with the goal of awarding 25-35 percent of construction and management contracts to minority businesses;
 - l. Off-hours use of the office garage parking facilities by local residents;
 - m. Addition of more off-street parking spaces than required by the Zoning Regulations;
 - n. Creation of approximately 465 permanent jobs and 100 temporary construction jobs;
 - o. Increased tax revenues for the District of Columbia of approximately \$1,000,000 annually;
 - p. Cash contribution of \$300,000.00 to the People's Involvement Corporation for the development of low-and moderate-income housing in the District of Columbia;
 - q. Creation, in conjunction with the Washington Sculptors Group, of an outdoor sculpture garden with 4 to 6 pieces of sculpture at the entrance to the office building and development of a program at Francis Junior High School to involve the students in the creation of the sculpture; and
 - r. The production of 53 additional apartment units on the Square 35 Site to contribute to the West End and the District of Columbia, and which can only be produced if subsidized by the development of an office building on the Square 24 Site (subsidy valued at approximately \$1,961,418).
18. The District of Columbia Office of Planning (OP), by memorandum dated January 22 and February 17, 1988, and by testimony presented at the public hearing,

recommended approval of the application, and stated its preference for Alternative A, the seven-story office building. OP believes that under either alternative the use and design of the office building will complement surrounding uses and structures. OP supports the cash contribution to PIC and does not believe that the donation is housing "linkage." The housing linkage in this case involves the development of housing on Square 35. OP concurs with the findings of the applicant's transportation analysis that no adverse traffic conditions are expected to impact on Francis Junior High School. OP believes that the project furthers the goals and objectives of the Comprehensive Plan. The modification to Order No. 512 will result in a gain in housing in the West End and the cash contribution to PIC will result in the production of low-and moderate-income housing, a city-wide benefit.

19. Advisory Neighborhood Commission (ANC) 2A, by resolution dated January 25, 1988, and testimony at the public hearing, opposed the application and expressed its issues and concerns as follows:
 - a. A residential building on the Square 24 Site would bring needed evening and weekend life to the West End and form a bridge between the housing on N Street and the housing on M and 25th Streets;
 - b. The Square 24 Site is ideally located for residential development: across from Rock Creek Park, a school, a swimming pool, tennis court, playing fields, swings and other recreational facilities;
 - c. The corner site should present no design difficulties that preclude residential development as many other corner sites in the District have been developed successfully for residential purposes;
 - d. The 147,000 square feet of office space was not included in the original plans for the block which ANC 2A supported;
 - e. The PUD benefits proffered by Boston Properties will not accrue to ANC 2A;
 - f. The result of the project will be the net loss of housing to the West End;
 - g. Most of the offered benefits should be provided by the District of Columbia Government;

- h. Other benefits, such as landscaping, will benefit the office building occupants and merely increase the value of the office building;
 - i. The housing linkage funds will be spent outside ANC 2A, without a demonstrated nexus or a formal District of Columbia policy;
 - j. This housing linkage proposal would establish a poor precedent; and
 - k. A covenant was signed guaranteeing the development of the Square 24 Site for residential purposes.
20. Advisory Neighborhood Commission (ANC) 2B, by letter dated January 22, 1988, opposed the application and expressed its opinions as follows:
- a. The proposal violates a covenant entered into by the District with Boston Properties;
 - b. The proposal reduces the total residential stock previously agreed upon the two lots at issue; and
 - c. The proposal threatens public use of Rock Creek Park and other public areas bordering the park.
21. The site has a reasonable potential to be attractive for residential development. In this issue, the Commission is substantially more persuaded by the views of ANC 2A and other opponents than it is by the applicant.
22. The proffered support for the development of housing is not adequately directed toward the development of housing in the neighborhood of or in reasonable proximity to Square 24.
23. The proffered support for the development of housing is insubstantial, in light of the extent and value of the proposed office development
24. The applicant has requested the Commission to disregard the covenant which was signed by the applicant guaranteeing the development of the Square 24 Site for residential purpose.
25. The Commission is not persuaded that housing will not eventually be built on the Square 24 site.
26. By memorandum dated April 25, 1988, the Deputy Corporation Counsel, Community Development Division, concluded that the donation of the \$300,000 to PIC in exchange for the use of the 7th floor of office space on the Square 24 Site should not be relied upon as the sole determinant

in approving the application, because of the absence of a reasonable beneficial connection or nexus between the proposed donation and the neighborhood in which the PUD would be located, and which would be affected by the PUD.

CONCLUSIONS OF LAW

1. Applicant has not met its burden of proof under 11 DCMR 2403.10.
2. Approval of this application would be inconsistent with the Comprehensive Plan, because it would encourage excessive non-residential development in an area which the Plan designates for a mix of residential and non-residential development.
3. Approval of the application would not be consistent with the purposes of the Zoning Act and the Zoning Map of the District of Columbia, which include stabilizing land values and improving residential and mixed use areas.
4. The project would not enhance and promote the mixed-use character of the neighborhood.
5. Approval of this application would not promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
6. The Zoning Commission has accorded ANCs 2A and 2B "great weight" .
7. The Commission determined that the applicant did not fulfill his burden to prove the case.
8. The action of the Zoning Commission in the instant application shall have no effect on and shall not supersede the action of the Zoning Commission in Order No. 512.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission of the District of Columbia hereby orders that this application for consolidated review and approval of a PUD for lot 110 in Square 24 and modification to an approved PUD for lot 802 in Square 35 be DENIED.

Vote of the Commission taken at the public meeting of April 11, 1988: 3-0 (Lindsley Williams, John G. Parsons, and Maybelle T. Bennett to deny; Patricia N. Mathews not present, not voting).

This order was adopted at a special meeting held on May 19, and May 23, 1988, by a vote of 3-0 (John G. Parsons, Maybelle T. Bennett to adopt as amended; Lindsley Williams to adopt by absentee vote; Patricia N. Mathews, not present, not voting; George M. White, not voting, not having heard the case).

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, specifically on 10 JUN 1988.



MAYBELLE T. BENNETT
Chairperson
Zoning Commission



EDWARD L. CURRY
Executive Director
Zoning Secretariat

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